

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ROBERT WAYNE ZACHOW,

Plaintiff,

v.

CITY OF PORTLAND, Oregon,

Defendant.

Case No. 3:14-cv-00140-JE

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John Jelderks issued Findings and Recommendation in this case on February 5, 2014. Dkt. 6. Judge Jelderks recommended that Plaintiff Robert Wayne Zachow's ("Plaintiff") application to proceed *in forma pauperis* (Dkt. 2) be granted and motion for appointment of pro bono counsel (Dkt. 3) be denied. Judge Jelderks further recommended that this action should be dismissed without service of process for failure to state a claim upon which relief may be granted and for lack of subject matter jurisdiction, and that a judgment should be entered dismissing the action without prejudice and with leave to file an amended complaint within thirty days of this Court's order. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendation, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report[.]”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review de novo magistrate’s findings and recommendation if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendation for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Jelderks’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Jelderks’s Findings and Recommendation, Dkt. 6. The Court **GRANTS** Plaintiff’s application to proceed *in forma pauperis*, Dkt. 2. The Court **DENIES** Plaintiff’s motion for appointment of pro bono counsel, Dkt. 3. This action is **DISMISSED WITHOUT PREJUDICE** and **WITHOUT SERVICE OF PROCESS** for failure to state a claim upon which relief may be granted and for lack of subject matter jurisdiction. The Court **GRANTS** Plaintiff leave to file an amended complaint within thirty days of this Court’s order.

IT IS SO ORDERED.

DATED this 25th day of March, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge